

UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re: ) Docket No. 3:17-BK-3283 (LTS)  
)  
) PROMESA Title III  
The Financial Oversight and )  
Management Board for )  
Puerto Rico, ) (Jointly Administered)  
)  
*as representative of* )  
)  
The Commonwealth of )  
Puerto Rico, *et al.* ) January 27, 2021  
)  
Debtors, )

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OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES:

ALL PARTIES APPEARING TELEPHONICALLY

For The Commonwealth  
of Puerto Rico, *et al.*: Mr. Martin J. Bienenstock, PHV  
Mr. Brian S. Rosen, PHV

For Puerto Rico Fiscal  
Agency and Financial  
Advisory Authority: Mr. Luis C. Marini Biaggi, Esq.

1 APPEARANCES, Continued:

2 For Luis Duprey Rivera  
3 and Joe Colon Perez: Mr. Luis Rodriguez Munoz, Esq.

4 For Asociacion de  
5 Maestros de  
Puerto Rico: Mr. Jose Luis Barrios Ramos, Esq.

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25 CAT.

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2	WITNESSES:	PAGE
3	None.	
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5	EXHIBITS:	
6	None.	
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1 San Juan, Puerto Rico

2 January 27, 2021

3 At or about 9:39 AM

4 \* \* \*

5 THE COURT: Good morning. This is Judge Swain  
6 speaking.

7 MS. NG: Good morning, Judge. This is Lisa.  
8 Everybody's here.

9 THE COURT: Thank you.

10 Ms. Tacoronte, would you please call the case?

11 COURTROOM DEPUTY: Good morning, Your Honor.

12 The United States District Court for the District of  
13 Puerto Rico is now in session. The Honorable Judge Laura  
14 Taylor Swain presiding. Also present, Honorable Magistrate  
15 Judge Judith Dein. God save the United States of America and  
16 this Honorable Court.

17 *In re: The Financial Oversight and Management Board*  
18 *for Puerto Rico, as representative of the Commonwealth of*  
19 *Puerto Rico*, PROMESA Title III, Case No. 2017-BK-3283, for  
20 Omnibus Hearing.

21 THE COURT: Thank you, Ms. Tacoronte. And good  
22 morning to you as well.

23 Buenos dias. Welcome, counsel, parties in interest,  
24 and members of the public and press. Today's telephonic  
25 Omnibus Hearing is occurring in what continue to be

1 | challenging times for all stakeholders in these Title III  
2 | proceedings. Our thoughts remain with all of the people on  
3 | the island and on the mainland, especially those who are  
4 | affected by the ongoing COVID-19 pandemic. We continue to  
5 | hope for a healthy and safe new year for everyone.

6 |           To ensure the orderly operation of today's telephonic  
7 | hearing, all parties on the line must mute their phones when  
8 | they are not speaking. If you are accessing these proceedings  
9 | on a computer, please be sure to select "mute" on both the  
10 | Court Solutions dashboard and your phone. When you need to  
11 | speak, you must unmute on both the dashboard and the phone.

12 |           I remind everyone that consistent with court and  
13 | judicial conference policies, and the orders that have been  
14 | issued, no recording or retransmission of the hearing is  
15 | permitted by any person, including but not limited to the  
16 | parties, members of the public, or the press. Violations of  
17 | this rule may be punished with sanctions.

18 |           I will be calling on each speaker during these  
19 | proceedings. When I do, please identify yourself by name for  
20 | clarity of the record. After the speakers listed on the  
21 | Agenda for each of today's matters have spoken, I may provide  
22 | an opportunity for other parties in interest to address  
23 | briefly any issues raised during the course of the  
24 | presentations that require further remarks. If you wish to be  
25 | heard under these circumstances, please state your name

1 clearly at the appropriate time. Don't just use the "wave" on  
2 the Court Solutions dashboard. I will call on the speakers if  
3 more than one person wishes to be heard.

4 Please don't interrupt each other or me during the  
5 hearing. If we interrupt each other, it is difficult to  
6 create an accurate transcript. Having said that, I apologize  
7 in advance for breaking this rule, as I may interrupt if I  
8 have questions or if you go beyond your allotted time. If  
9 anyone has difficulty hearing me or another participant,  
10 please say something immediately.

11 The Agenda, which was filed at Docket Entry No. 15730  
12 in Case No. 17-3283, is available to the public at no cost on  
13 Prime Clerk for those interested. I encourage each speaker to  
14 keep track of his or her own time. The Court will also be  
15 keeping track of the time and will alert each speaker when  
16 there are two minutes remaining with one buzz, and when time  
17 is up, with two buzzes. Here is an example of the buzz sound.

18 (Sound played.)

19 THE COURT: If your allocation is two minutes or  
20 less, you will just hear the final two buzzes. If we need to  
21 take a break, I will direct everyone to disconnect and dial  
22 back in at a specified time.

23 Before we address the first Agenda item, I would like  
24 to acknowledge the Court's receipt and careful review of the  
25 Fee Examiner's status report, which was filed at Docket Entry

1 No. 15666 in Case No. 17-3283. The Court thanks the Fee  
2 Examiner for his thorough report and for the essential  
3 services he provides in these cases. The Fee Examiner's  
4 attention to the magnitude of expenses, the principles that  
5 should govern billing in these cases, and the concerns that  
6 the Court has repeatedly emphasized is important and much  
7 appreciated. These matters are never far from the Court's  
8 mind and will inform the Court's final determinations. They  
9 should be heeded by all billing parties.

10 Next, we turn to the first Agenda item, which is, as  
11 usual, status reports from the Oversight Board and AAFAF. As  
12 I requested in the Procedures Order, these reports have been  
13 made in writing in advance of this telephonic hearing and are  
14 available on the public docket at Docket Entry Nos. 15739 and  
15 15738, respectively, in Case No. 17-3283. I thank the  
16 Oversight Board and AAFAF for the care and detail reflected in  
17 the reports, which I find quite comprehensive. I will call on  
18 them, respectively, for any further remarks.

19 First, from the Oversight Board, would you unmute on  
20 both the dashboard and the phone, and make any further  
21 remarks?

22 MR. BIENENSTOCK: Yes. Good morning, Your Honor.  
23 This is Martin Bienenstock of Proskauer Rose, LLP, for the  
24 Oversight Board. We don't have any additional comments, but  
25 of course are ready to answer any questions.

1 THE COURT: Thank you, Mr. Bienenstock, and good  
2 morning. I don't have further questions for you today.

3 MR. BIENENSTOCK: Thank you.

4 THE COURT: Thank you.

5 And for AAFAF, would anyone like to speak?

6 MR. MARINI BIAGGI: Yes. Good morning, Your Honor.

7 Luis Marini of Marini Pietrantonio Muniz for AAFAF.

8 If I may, Your Honor, I do have one point that I  
9 would like to supplement our status report on briefly, just to  
10 comment on one particular issue regarding the government's and  
11 AAFAF's continuing efforts to resolve their claims.

12 AAFAF'S representatives have been working with the  
13 Oversight Board and with the union, Employees' Union  
14 representatives to issue a circular letter that informs  
15 government agencies, instrumentalities, and public  
16 corporations that they should resume reconciling non-filed  
17 public employee claims according to the applicable ordinary  
18 course procedures. This should allow for the resolution of  
19 employee claims for which no proof of claim was filed or  
20 required. And AAFAF intends to circulate the letter within a  
21 week of it being finalized by the Board, AAFAF, and the  
22 unions.

23 We just wanted to supplement that particular point to  
24 our report. And, of course, I'm available if the Court has  
25 any questions on our status report.



1           THE COURT: Thank you, Mr. Marini Biaggi. I don't  
2 have further questions on the status report, but I would like  
3 to ask one follow-up question on the matter that you just  
4 mentioned.

5           Will this reconciliation of the unfiled Employee  
6 Union claims be part of what we've called the administrative  
7 claim reconciliation, or ACR procedures that I've approved, or  
8 will this be a different procedure?

9           MR. MARINI BIAGGI: This claim -- no proof of claim  
10 was filed, and, in fact, it's awaiting -- reconciled depending  
11 on the agency's and the government's ordinary course. So it's  
12 a matter of administrative procedures, but the intent is that  
13 they be reconciled and paid through the particular government  
14 agency's ordinary procedures.

15          THE COURT: Thank you. So this would not be a matter  
16 of referring something that was filed as a proof of claim into  
17 the procedure, but, rather, looking at the union and the  
18 agency's own records and resolving them in the ordinary  
19 course; is that correct?

20          MR. MARINI BIAGGI: That is correct, Your Honor.

21          THE COURT: Thank you very much for helping me to  
22 understand that. And thank you for your report and  
23 supplemental report.

24          Is there anyone else who wishes to comment or make a  
25 question as to the reports? I will wait 30 seconds so that

1 anyone can unmute on the dashboard and their phone and state  
2 their name if they wish to be heard at this point.

3 MR. BARRIOS RAMOS: Your Honor, Counsel Jose Luis  
4 Barrios for Asociacion de Maestros de Puerto Rico, an  
5 affiliate of American Federation of Teachers. We would like  
6 to -- I'm sorry, Your Honor.

7 THE COURT: Yes. You may proceed. Would you just  
8 state your name one more time?

9 MR. BARRIOS RAMOS: Yes, Your Honor. Attorney Jose  
10 Luis Barrios on behalf of Asociacion de Maestros de Puerto  
11 Rico, an affiliate of American Federation of Teachers.

12 Your Honor, respectfully, as to the point that  
13 Counsel Marini just pointed out, and to address your question,  
14 we have -- we have discussed with AAFAF and the Board that  
15 these claims that are part -- or that are not dealt with in  
16 the Plan of Adjustment, because the Board had stated on the  
17 bar notice they -- that were not needed to be subject to a  
18 proof of claim, now that we're working on this circular  
19 letter, it includes not only grievances claims, but normal  
20 employee claims and, also, tax refunds. So, as you correctly  
21 stated, it would be all those claims, not subject to a proof  
22 of claim, that are part of the ACR Order that Your Honor  
23 issued.

24 THE COURT: Yes. Are you still there?

25 MR. BARRIOS RAMOS: Yes, I'm here, Your Honor.

1           THE COURT: Okay. It seemed like the sound cut off  
2 for a moment there, so I wanted to make sure we are all still  
3 here.

4           So you're indicating that this is normal employee  
5 compensation, and other types of claims, as well as  
6 grievances, and, also, tax refunds? What sorts of taxes would  
7 that be?

8           MR. BARRIOS RAMOS: Oh, Your Honor, our understanding  
9 of the ACR Order, and we're advocating on behalf of employee  
10 claims and grievance claims, but it's that your -- the ACR  
11 Order that you issued will comprehend any claims within those  
12 definitions that were not subject to a proof of claim, that  
13 were filed as of May 3rd, 2017. And that's the point we want  
14 to clear out or inquire to Mr. Marini.

15           THE COURT: Yes. Thank you.

16           Mr. Marini, would you please further clarify?

17           MR. MARINI BIAGGI: Yes, Your Honor.

18           First, I will clarify that, you know, AAFAF will work  
19 with the unions to clear up any language or any issue also of  
20 how does the Court -- yes, Your Honor. The circular letter  
21 refers to various types of employee claims. It refers to  
22 pension claims of the employees, to complaints and grievances,  
23 public employee claims. And what it provides is that they  
24 will continue in the ordinary process of evaluation,  
25 resolution, and its required payment in the ordinary course of

1 the particular government agency's claims.

2 I believe it is also contemplating the ACR that  
3 provides, for that type of claim, they will be evaluated and  
4 processed in the ordinary course.

5 THE COURT: So, a few moments ago I think I  
6 understood you to say that these would not technically be in  
7 the ACR, because the ACR procedure itself applies to claims  
8 that were actually filed as proofs of claims that fall into  
9 these categories; but that pursuant to this letter  
10 arrangement, they will be handled in the ordinary course in a  
11 way that is similar to the ACR. Is that correct?

12 MR. MARINI BIAGGI: They will be handled in the  
13 ordinary course of that particular agency's or government's  
14 process. They will be evaluated, resolved, and in the course  
15 -- paid in the particular agency's or government's ordinary  
16 course.

17 THE COURT: Thank you.

18 Mr. Barrios, does that answer your question?

19 MR. BARRIOS RAMOS: Your Honor, if I may, our  
20 understanding, as I expressed before, is that pursuant to the  
21 language of the ACR Order entered by the Court, claims not  
22 subject to a proof of claim, but that do qualify as employee  
23 claims, grievance claims under the definition of the ACR  
24 Order, are part of the ACR Order, whether they are subject to  
25 a proof of claim or not. And that they will be dealt with,

1 | like Mr. Marini said, in the ordinary course, throughout the  
2 | existing administrative proceedings, but that they will also,  
3 | in the case that the claimant is successful in their claim, be  
4 | paid in the ordinary course, pursuant to the same terms as the  
5 | ACR Order established for claims subject to a proof of claim.

6 |           THE COURT: All right. I don't have the specific ACR  
7 | Order in front of me right now. But Mr. Marini has said that  
8 | AAFAF is engaged in these conversations, and so what I would  
9 | urge you to do is to take up directly with Mr. Marini anything  
10 | that you feel is ambiguous in working toward this letter,  
11 | understanding; and if anything further needs to be brought to  
12 | the Court to implement it, I will trust that that will be done  
13 | in a way consistent with the Case Management Order.

14 |           Is that satisfactory to you?

15 |           MR. BARRIOS RAMOS: Yes, Your Honor.

16 |           THE COURT: Thank you, Mr. Barrios. And thank you,  
17 | Mr. Marini.

18 |           Does anyone else wish to be heard at this point? I  
19 | will wait another 20 seconds, in case anyone wants to state  
20 | his name or her name.

21 |           MR. BARRIOS RAMOS: Your Honor, only one last point,  
22 | if I may. This matter --

23 |           THE COURT: Is this Mr. Barrios again?

24 |           MR. BARRIOS RAMOS: I'm sorry, Your Honor.

25 |           We'd just like to make reference that this matter as

1 to the claims that are not subject to a proof of claim be also  
2 part of the ACR Order. It's covered in the first footnote of  
3 the ACR Order.

4 THE COURT: All right. Thank you.

5 Again, if this is not something that you are able to  
6 discuss and reconcile in the discussions, I will expect that  
7 some sort of appropriate application would be made to the  
8 Court; but it does sound as though AAFAF's goal is to come up  
9 with an understanding that is comprehensive and workable. And  
10 so I will expect that Mr. Marini will take seriously any  
11 concern about coordination of the procedures, as you do, so  
12 that the letter will be appropriate. Thank you.

13 MR. BARRIOS RAMOS: Thank you, Your Honor. And I --  
14 and I just misspoke. It's the third footnote of the ACR  
15 Order. Sorry, Your Honor.

16 THE COURT: All right then. The third footnote of  
17 the ACR Order is what needs particular attention in these  
18 discussions. Thank you again, Mr. Barrios.

19 MR. BARRIOS RAMOS: Thank you, Your Honor.

20 THE COURT: All right. I'll wait a couple more  
21 seconds for anyone else.

22 (No response.)

23 THE COURT: Very well then. We will now go on to the  
24 one contested matter that is on today's Agenda, which is the  
25 Duprey Rivera Motion for Relief from the Automatic Stay, which

1 is Docket Entry No. 15186 in Case No. 17-3283. We have  
2 allotted ten minutes for the argument of that motion,  
3 beginning with Mr. Rodriguez Munoz for three minutes for the  
4 movants.

5 Mr. Rodriguez Munoz, would you please unmute on the  
6 dashboard and on your phone?

7 MR. RODRIGUEZ MUNOZ: Good morning, Your Honor. I am  
8 Attorney Luis Rodriguez Munoz. I'm with the law firm of  
9 Landron Vera. We represent Mr. Luis Duprey and Mr. Joe Colon  
10 Perez.

11 THE COURT: Good morning.

12 MR. RODRIGUEZ MUNOZ: I am ready to proceed.

13 THE COURT: Yes. You may proceed now.

14 MR. RODRIGUEZ MUNOZ: Thank you, Your Honor.

15 Again, I would start off by apologizing for the  
16 mishap the last time this matter was scheduled.

17 Unfortunately, my office and myself were not very versed in  
18 the Court Solutions system.

19 That said, Your Honor, we ask again that the Court  
20 grant the Lift of Stay in the instant case. What we're asking  
21 the Court to do, and for -- to be paid, Your Honor. It's a  
22 very minimal sum. We're only looking that the government pay  
23 \$33,203.75, in a judgment that for the most part has been  
24 paid, but for the attorney fees, Your Honor. These attorney  
25 fees are imposed based on statute. PROMESA, as the Court is

1 aware, did not change or alter our obligation under these  
2 statutes. And it's very important, Your Honor, that this be  
3 allowed to proceed.

4           Unfortunately, the legislature does not permit  
5 attorneys to cost the expense of these litigations to their  
6 particular clients, but, instead, has designed it in such a  
7 way to make these fees punitive, Your Honor, because, as was  
8 the result here, this was an unlawful termination. And as a  
9 result --

10           (Sound played.)

11           MR. RODRIGUEZ MUNOZ: -- there's a desire to further  
12 and promote lawyers from taking these cases. If these cases  
13 are not allowed and allowed to linger within the PROMESA  
14 bankruptcy, Your Honor, it would have a very chilling effect  
15 on the services rendered in these communities, Your Honor.

16           Again, we believe in our motion we set out the  
17 parameters sufficient for the stay to be lifted, allow this  
18 matter to move forward, and to a final conclusion, Your Honor.  
19 With that said, Your Honor, I yield the rest of my time but  
20 for the rebuttal.

21           THE COURT: I do have a question for you. In your  
22 motion, you cite Section 523(a) of the Bankruptcy Code,  
23 arguing that this is a punitive award, and, therefore,  
24 something that could be classified as an intentional tort and  
25 nondischargeable. As the debtor has pointed out in the



1 Response, Section 523 applies to individual debtors, and is  
2 not incorporated into PROMESA. Do you have a response to  
3 that?

4 MR. RODRIGUEZ MUNOZ: Your Honor, I would submit,  
5 Your Honor, this is a nondischargeable debt, because, again,  
6 the underlying litigation in this case was a wrongful  
7 discharge. As such, we have an intentional act to remove this  
8 person from this position. Normally, all of this would be  
9 included as direct payment to the plaintiff in that case,  
10 Mr. Luis Duprey Rivera.

11 And that's our basis, Your Honor, for understanding  
12 that the case is nondischargeable.

13 THE COURT: Thank you.

14 And so I will turn now to counsel for AAFAF,  
15 Mr. Marini Biaggi.

16 MR. MARINI BIAGGI: Good morning, Your Honor. Luis  
17 Marini of Marini Pietrantonio Muniz for AAFAF. May I be heard,  
18 Your Honor?

19 THE COURT: Yes, please.

20 MR. MARINI BIAGGI: Your Honor, the motion seeks to  
21 lift the automatic stay to allow movants to collect a  
22 prepetition award of attorneys' fees issued by the  
23 Commonwealth Court in connection with prepetition litigation.  
24 However, the movants have failed to make any showing that  
25 cause exists to lift the automatic stay among the factors used

1 by the courts in this circuit to make such a determination.  
2 Further, allowing movants to pursue collection of their claim  
3 against HTA would unduly effect HTA's restructuring efforts  
4 and prejudice similarly situated creditors.

5 We went, in our objection, through the case law,  
6 through the movants' factors, and we submitted there that all  
7 of the factors used by this Court and other courts in this  
8 circuit, all of the *Sonnax* factors, merit denial of the  
9 motion. I will briefly mention some of the more critical  
10 ones.

11 First, the first *Sonnax* factor, which talks about  
12 whether relief would result in complete or partial resolution  
13 of the issues, weighs against lifting the stay. That factor  
14 does not focus on the issues in the stay prepetition  
15 litigation. It focuses on the issues of whether resolution of  
16 the litigation would resolve issues relevant to the bankruptcy  
17 case.

18 Movants have not identified any bankruptcy issue  
19 related to HTA's Title III case that will be resolved by  
20 allowing the claim to continue. In fact, no bankruptcy issue  
21 will be resolved, other than going contrary to the goal of  
22 centralizing disputes concerning the government as part of the  
23 reorganization.

24 The second *Sonnax* factor, the lack of any connection  
25 with or interference with the bankruptcy case, also weighs

1 against lifting the stay. If movant seeks relief to -- of the  
2 stay to require HTA to disburse tens of thousands of dollars  
3 for an attorney fee award, allowing movant to collect their  
4 claim would interfere with the orderly restructuring of HTA's  
5 debts, preferring one creditor over another.

6 Now, the issue of dischargeability that Your Honor  
7 asked brother counsel about, they assert that the debt is --  
8 or the claim is nondischargeable. As we said in our paper, we  
9 submit that that argument is misplaced.

10 First, the section that they rely on, Bankruptcy Code  
11 Section 523, was not incorporated into PROMESA.

12 Second, even if it were incorporated, it does not  
13 apply to movants' claim, because that applies to debts arising  
14 from willful and malicious injury by the debtor. For this  
15 exception to apply, as we cited in our papers to cases from  
16 the First Circuit, it requires a showing of intent to injure,  
17 which hasn't been shown --

18 (Sound played.)

19 MR. MARINI BIAGGI: -- or proven in the motion.

20 Third, even if the claim were to be exempt from  
21 discharge, which it is not, that does not mean that lifting  
22 the stay for collection would not interfere with the ongoing  
23 restructuring efforts.

24 Fourth *Sonnax* factor doesn't apply. There's no  
25 specialized tribunal to hear this case.

1 Fifth *Sonnax* factor doesn't apply. There's no  
2 insurance carrier that's accepted financial responsibility for  
3 the claim.

4 Sixth doesn't apply. There are no third parties  
5 other than the debtor that have been identified in the  
6 action.

7 The seventh was a litigation with prejudice to  
8 interests of other creditors, does not support granting the  
9 motion, because it would, in fact, prejudice and place an  
10 undue advantage, this movant above other creditors that are  
11 waiting for a plan of adjustment to be filed to make payment  
12 on their claims.

13 Tenth factor, the interest of judicial economy,  
14 weighs against granting the motion. Judgment has already been  
15 entered, and there's no pending litigation to be resolved.

16 Finally, the 12th factor, the balancing of harms  
17 weighs also against granting the motion. The impact on HTA,  
18 if the motion were granted, would outweigh any harms that  
19 movant would suffer if the stay remains in place. HTA will be  
20 required to disburse tens of thousands of dollars, and the  
21 divergence of HTA's resources will prejudice the interests of  
22 other similarly situated creditors that are waiting for the  
23 plan of adjustment to be filed.

24 Your Honor, we detailed our objections and the case  
25 law supporting it in our pleadings. I read from them. And

1 I'm available to answer any questions that the Court may have.

2 THE COURT: Thank you, Mr. Marini. I don't have  
3 questions for you, and so I will now turn back to  
4 Mr. Rodriguez Munoz for his rebuttal.

5 Mr. Rodriguez Munoz, you have to unmute on your phone  
6 and the dashboard.

7 MR. RODRIGUEZ MUNOZ: Attorney Luis Rodriguez Munoz  
8 again, Your Honor, just very briefly.

9 The original judgment in this case was for \$132,815,  
10 that -- the bulk of which has been paid, Your Honor. So the  
11 impact, I would disagree with brother counsel in that front.  
12 Again, we're talking about a minimal amount of \$33,203.75 of  
13 payment that would then seal the judgment and have it complied  
14 and fulfilled, Your Honor.

15 But more importantly, I think that, you know, there  
16 is a serious concern that -- what it would do within the  
17 community, if it's known that attorneys who represent  
18 individuals such as these, with little income to seek relief  
19 from the Court, knowing that they may never get paid, is a  
20 concern and a chilling effect that it would have in the legal  
21 community here.

22 So, Your Honor, I do believe there is ample reason  
23 for lifting the stay, and would ask the Court to confirm the  
24 motion and so grant it.

25 THE COURT: Now, I am, actually, in light of that

1 remark, going to direct a question to Mr. Marini.

2 Mr. Marini, this is a claim that accrued and a  
3 judgment that was entered prior to the filing of the Title  
4 III. Do you have a comment as to Mr. Rodriguez' argument that  
5 not lifting the stay to pay this prepetition judgment now  
6 would have a chilling effect on lawyers who may post petition  
7 be asked to take up these sorts of cases?

8 MR. MARINI BIAGGI: Yes, Your Honor. Luis Marini for  
9 AAFAF.

10 Your Honor, we address that point in our -- in our  
11 papers, and part of what we mention is that that argument  
12 should be unavailing in this context. I mean, the First  
13 Circuit has recognized that even worthy considerations should  
14 be weighed against the impact on HTA's restructuring efforts  
15 and overall fiscal health. Opening the gates to this type of  
16 action would affect the restructuring efforts of HTA and its  
17 fiscal health, and would put these type of creditors in a  
18 different position than other creditors of all prepetition  
19 judgment or prepetition claims.

20 We cited to a case for this proposition in our  
21 papers, and we think that it does not rise to the level of  
22 requiring or meriting that the motion be granted.

23 THE COURT: Mr. Marini, I probably wasn't as clear as  
24 I should have been in my question. Mr. Rodriguez is, at least  
25 in part, expressing a concern about a situation that could

1 arise post petition. Say, someone whose employment was  
2 interfered with or terminated after the Title III began, and  
3 who goes to a lawyer today to seek to bring a complaint or a  
4 suit about something that happened, say, in 2019. Would there  
5 be any reason for that sort of a lawyer to be concerned that  
6 the Title III stay would interfere with the ability to seek,  
7 ultimately, compensation for a post-petition wrong, if you  
8 will?

9 MR. MARINI BIAGGI: Sure, Your Honor. I understand  
10 that -- two points that I would mention in response. At that  
11 point, assuming that a case is filed, and judgment is entered,  
12 and that the matter is not resolved consensually, then that --  
13 the parties would have to go through the lift of stay  
14 protocol, and HTA -- decide if the stay is going to be lifted  
15 or not, and the issue brought to Your Honor.

16 But from a practical perspective, Your Honor, I think  
17 this is the only case that we've had, either post or  
18 prepetition, asserting this type of controversy. It's not --  
19 it hasn't been a common or otherwise repeated issue. And we  
20 don't think that it merits opening the doors so -- to allow  
21 claimants to file these claims. I mean, these claims continue  
22 to be filed, and matters continue to be asserted. And we  
23 don't think that it would have a chilling effect on the  
24 ability of lawyers to bring this action and then discuss  
25 whether the stay would continue to remain in place or seek

1 remedies before the Court.

2 THE COURT: Thank you.

3 Mr. Rodriguez Munoz, you may now complete your  
4 rebuttal.

5 MR. RODRIGUEZ MUNOZ: Well, Your Honor, I would point  
6 out that -- again, for the record, this is Attorney Luis  
7 Rodriguez Munoz.

8 The fact that there is not a deluge of these cases,  
9 Your Honor, should be taken as a consideration that they're  
10 being paid, Your Honor. As I pointed out, the bulk of this  
11 judgment has been paid. And if they've not handled it the  
12 same -- Your Honor, I would suggest that the agency is  
13 conceding that this is an obligation that won't go away, even  
14 with the instant bankruptcy. And, therefore, there's no  
15 reason to delay it until there's a plan or some other  
16 procedures --

17 (Sound played.)

18 MR. RODRIGUEZ MUNOZ: -- on the matter, Your Honor.

19 So with that, Your Honor, again, I yield back.

20 THE COURT: Thank you very much.

21 I read very carefully the submissions before this  
22 argument, and I've listened very carefully to the argument. I  
23 will now render my oral decision.

24 Before the Court is Mr. Luis Duprey Rivera's Motion  
25 for Relief from the Automatic Stay Pursuant to PROMESA



1 Sections 4, 7, 301(c)(3), 304(h), and Bankruptcy Code Sections  
2 362(b)(4) and (d)(1), which is Docket Entry No. 15186 in Case  
3 No. 17-3283 -- I'll refer to it as the Motion -- filed by Luis  
4 Duprey Rivera and Joe Colon Perez, who I will refer to as the  
5 Movants.

6 The Motion requests relief from the automatic stay  
7 with respect to enforcement of an award of statutory  
8 attorneys' fees and interest against the Puerto Rico Highways  
9 and Transportation Authority, which I will refer to as HTA.

10 The Court has reviewed the relevant pleadings  
11 carefully. The Court now makes its oral ruling as to the  
12 Motion, and reserves the right to make nonsubstantive  
13 corrections in the transcript of this ruling. The Court has  
14 jurisdiction of the Motion pursuant to Section 306(a) of  
15 PROMESA.

16 The Motion seeks relief under Section 362(d)(1) of  
17 the Bankruptcy Code, which permits a court to grant relief  
18 from the automatic stay for cause. To determine whether cause  
19 exists to lift the automatic stay, courts in this circuit  
20 examine the factors enumerated by the United States Court of  
21 Appeals for the Second Circuit in *In re Sonnox Industries,*  
22 *Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990). See *Autonomous*  
23 *Municipality of Ponce v. Financial Oversight and Management*  
24 *Board for Puerto Rico*, 939 F.3d 356, 362 (1st Cir. 2019).

25 Of particular relevance to the instant case are the

1 following factors identified in the *Sonnax* decision: Whether  
2 relief would result in a partial or complete resolution of the  
3 issues; lack of any connection with or interference with the  
4 bankruptcy case; whether the action primarily involves third  
5 parties; whether litigation in another forum would prejudice  
6 the interests of other creditors; and the impact of the stay  
7 on the parties and the balance of harms. I quote from *Sonnax*,  
8 907 F.2d, at 1286.

9 Here, Movants have failed to demonstrate that the  
10 *Sonnax* criteria weigh in their favor. Lifting the automatic  
11 stay would not result in the resolution of issues that would  
12 aid the Title III cases. Movants have already liquidated  
13 their claim. The only remaining procedure appears to be the  
14 collection of the judgment.

15 To the extent that HTA's creditors ultimately may not  
16 receive a full recovery under a future plan of adjustment,  
17 payment of Movants' claim in full may directly affect  
18 resources available to satisfy other creditors' claims. Thus,  
19 lifting the automatic stay would prejudice other similarly  
20 situated creditors, all of whom will have to wait for  
21 confirmation of a plan of adjustment before receiving payment  
22 on their claims.

23 Movants argue that Section 523(a)(6) of the  
24 Bankruptcy Code precludes the discharge of their claim by a  
25 future plan of adjustment. However, the provisions of the

1 Bankruptcy Code that are applicable in Title III of PROMESA  
2 are enumerated in Section 301 of PROMESA, which is 48 U.S.C.  
3 Section 2161(a). Section 523 of the Bankruptcy Code is not on  
4 that list.

5           Additionally, Section 523(a)(6) only applies to  
6 claims against individuals. The Title III debtors are not  
7 individuals, and claims against them, therefore, would not  
8 fall within the scope of 523(a)(6), even if that section were  
9 incorporated into PROMESA. Movants have, therefore, presented  
10 no basis for applying Section 523(a)(6) in these Title III  
11 cases.

12           Accordingly, Movants have not proffered any valid  
13 basis for relief from the automatic stay, and have failed,  
14 therefore, to show that there is cause for relief from the  
15 automatic stay. The Motion is denied, and the Court will  
16 enter an appropriate order.

17           Thank you, Mr. Rodriguez and Mr. Marini, for your  
18 arguments.

19           Is there any other matter that needs to be addressed  
20 today? We have come to the end of the Agenda of matters to be  
21 addressed. I will wait 30 seconds, and anyone who wishes to  
22 be heard should state their name.

23           (No response.)

24           THE COURT: This concludes the hearing Agenda for the  
25 January Omnibus Hearing. The next scheduled hearing is the

1 February 1st, 2021, hearing concerning Omnibus Claim  
2 Objections. That telephonic hearing will begin at 9:30 AM  
3 Atlantic Standard Time, which is 8:30 AM Eastern Time. The  
4 Court issued a procedures order providing logistical details  
5 earlier this week.

6 As always, I would like to thank the court staff in  
7 Puerto Rico, Boston, and New York for their work in preparing  
8 for and conducting today's hearing, and their outstanding  
9 ongoing support of the administration of these very complex  
10 cases under very challenging circumstances. Stay safe and  
11 keep well, everyone. We are adjourned.

12 (At 10:20 AM, proceedings concluded.)

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1 U.S. DISTRICT COURT )  
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 29 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States District Court Judge Laura Taylor Swain, and the  
8 Honorable United States Magistrate Judge Judith Gail Dein on  
9 January 27, 2021.

10

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12

13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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<p>&lt; Dates &gt;  February 1st, 2021  28:1  January 27, 2021  1:16, 4:2, 29:9  May 3rd, 2017 11:13  \$132,815 21:9  \$33,203.75 15:23,  21:12</p> <p>&lt; 1 &gt;  10:20 28:12  1280 25:22  1286 25:22  1286. 26:8  12th 20:16  15186 15:1, 25:2  15666 7:1  15730 6:11  15738 7:15  15739 7:14  17-3283 6:12, 25:3  17-3283. 7:1, 7:15,  15:1  17-BK-3283(LTS 1:6  1990). 25:22  1st 25:24</p> <p>&lt; 2 &gt;  20 13:19  2017-BK-3283 4:19  2019). 25:24  2019. 23:4  2161(a 27:3  29 29:4  2d 25:22</p> <p>&lt; 3 &gt;  30 9:25, 27:21  301 27:2  301(c) (3 25:1  304(h 25:1  306(a 25:14  356 25:24  362 25:24  362(b) (4 25:2  362(d) (1 25:16</p>	<p>3799 29:14  3: 1:6</p> <p>&lt; 4 &gt;  4 25:1  48 27:2</p> <p>&lt; 5 &gt;  523 17:1, 19:11,  27:3  523(a 16:22  523(a) (6 26:23,  27:5, 27:8, 27:10</p> <p>&lt; 7 &gt;  7 25:1</p> <p>&lt; 8 &gt;  8:30 28:3</p> <p>&lt; 9 &gt;  907 25:22, 26:8  939 25:24  9:30 28:2  9:39 4:3</p> <p>&lt; A &gt;  AAFAF 7:11, 7:16,  8:5, 8:7, 8:11,  8:20, 8:21, 10:14,  11:18, 13:8, 14:8,  17:14, 17:17, 22:9  AAFAF'S 8:12  ability 23:6, 23:24,  29:5  able 14:5  above 20:10  accepted 20:2  accessing 5:8  according 8:17  Accordingly 27:12  accrued 22:2  accurate 6:6, 29:5  acknowledge 6:24</p>	<p>ACR 9:7, 10:22,  11:9, 11:10, 12:2,  12:7, 12:11,  12:21, 12:23,  12:24, 13:5, 13:6,  14:2, 14:3, 14:14,  14:17  act 17:7  action 20:6, 22:16,  23:24, 26:4  actually 12:8, 21:25  additional 7:24  Additionally 27:5  address 5:22, 6:23,  10:13, 22:10  addressed 27:19,  27:21  adjourned 28:11  Adjustment 10:16,  20:11, 20:23,  26:16, 26:21,  26:25  Administered 1:11  administration 28:9  administrative 9:6,  9:12, 13:2  advance 6:7, 7:13  advantage 20:10  Advisory 1:41  advocating 11:9  affect 22:16, 26:17  affected 5:4  affiliate 10:5,  10:11  agencies 8:15  Agency 1:40, 9:11,  9:14, 9:18, 12:1,  12:13, 12:15,  24:12  Agenda 5:21, 6:11,  6:23, 7:10, 14:24,  27:20, 27:24  ago 12:5  aid 26:12  al 1:16, 1:35  alert 6:15  allocation 6:19  allotted 6:8, 15:2  allow 8:18, 16:17,  17:21, 23:20</p>
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